

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SONDRA G. GAUCHE, ¹	:	APPEAL NO. C-140478
	:	TRIAL NO. A-1305755
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GEOFFREY P. DAMON,	:	
	:	
and	:	
BUTKOVICH & CROSTHWAITE CO.,	:	
LPA,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Sondra G. Gauche appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of Geoffrey P. Damon and Butkovich & Crosthwaite Co., L.P.A., (“the firm”) on her claims for legal malpractice, breach of contract, and breach of fiduciary duty.

In 2009, Gauche retained Damon to represent her in conjunction with potential employment-law claims. In July 2010, Damon’s employment with the firm was terminated.

¹ We note that plaintiff-appellant’s first name is spelled both “Sandra” and “Sondra” in her notice of appeal.

On April 13, 2011, Gauche contacted the firm to advise them that Damon had failed to perfect several appeals with regard to her claims, one of which had been due on December 29, 2010. Gauche said that the Equal Employment Opportunity Commission (“EEOC”) had informed her that her appeals were time-barred.

On April 20, 2011, Joseph A. Butkovich, a principal in the firm, sent Gauche a letter informing her that Damon no longer worked for the firm and that she should contact an attorney with regard to her employment claims and any potential legal-malpractice claims. In addition, Butkovich enclosed a check for \$1,000 representing the cost that Gauche had advanced to the firm.

Gauche initially filed her action against Damon and the firm on June 29, 2012. She voluntarily dismissed the action on August 27, 2012, and refiled it on August 23, 2013. Damon and the firm filed motions for summary judgment on statute-of-limitations grounds. In her opposing affidavit, Gauche averred that she had not received Butkovich’s April 20, 2011 letter until August 2011, that his letter had been mailed to an address where she had no longer resided, and that she had deposited the firm’s check in November 2011. The trial court granted the summary-judgment motions.

In a single assignment of error, Gauche argues that the trial court erred by entering summary judgment in favor of Damon and the firm because issues of material fact existed with respect to the one-year statute of limitations for a claim of legal malpractice, under R.C. 2305.11(A).

Summary judgment is appropriately granted when no genuine issue of material fact exists, the movant is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion and that conclusion is adverse to the nonmoving party. *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 639 N.E.2d 1189 (1994). We review the trial court’s entry of summary

judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996).

Under R.C. 2305.11(A), an action for legal malpractice accrues when there is a cognizable event by which the plaintiff discovers or should discover the injury underlying the claim and is put on notice of the need to pursue potential remedies against the attorney, or when the attorney-client relationship for the transaction in question ends, whichever occurs later. *See Zimmie v. Calfee, Halter & Griswold*, 43 Ohio St.3d 54, 538 N.E.2d 398 (1989), syllabus; *Roberts v. Maichl*, 1st Dist. Hamilton No. C-040002, 2004-Ohio-4665, ¶ 20.

A plaintiff need not be aware of the full extent of the injury for a cognizable event to have occurred. *Zimmie* at 58. It is enough that some noteworthy event has occurred that would alert a reasonable person of an impropriety. *Id.*

In this case, there was no dispute that Damon's legal services for Gauche had concluded by July 28, 2010, and that there had been no agreement for any further legal services to be performed. Moreover, contrary to Gauche's assertions, the firm could not directly commit legal malpractice, because a law firm does not engage in the practice of law. *See Natl. Union Fire Ins. Co. v. Weurth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, at paragraph one of the syllabus. And the firm cannot be liable for any acts or omissions by Damon that occurred when he was not an associate of the firm. *See id.*, paragraph two of the syllabus. Therefore, no conduct attributable to the firm occurred within the limitations period.

The record demonstrates that the attorney-client relationship had terminated by the end of July 2010, and that the cognizable event had occurred no later than April 13, 2011, when Gauche called the firm with her concerns about Damon's potential malpractice. As a result, Gauche's June 2012 malpractice complaint was untimely under

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R.C. 2305.11(A). The trial court properly entered summary judgment in favor of Damon and the firm.

Accordingly, we overrule the assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on September 23, 2015

per order of the court _____.

Presiding Judge